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OFFICE OF PETITIONS

DECISION DISMISSING
PETITION

In re Application of
Tilman
Application No. 09/811,348
Filed: March 16, 2001
Attorney Docket No. 40655-201257

This is a decision on the petition filed on May 11, 2001, in effect requesting that a Notice to File Missing Parts of Nonprovisional Application ("Notice"), mailed on April 24, 2001 for the above-identified application, be partially withdrawn to the extent that it refers to an omitted Figure 7A.

The petition is DISMISSED.

The application was filed on March 16, 2001. However, on April 24, 2001, the Initial Patent Examination Division (OIPE) mailed the Notice stating that the application had been accorded a filing date, and advising Applicant that the basic filing fee, the extra claims fee, and an oath or declaration were missing; that substitute drawings in compliance with 37 CFR 1.84 were required; and that Figure 7A described in the specification appeared to have been omitted from the filed application.

In response, the present petition was filed wherein Petitioner contends that 41 sheets of drawings including the allegedly omitted Figure 7A were filed on March 16, 2001 along with the remainder of the application. In support, the petition is accompanied by a copy of the postcard receipt which acknowledges receipt in the Office on March 16, 2001 of, *inter alia*, 41 sheets of drawings. The application is identified on the postcard receipt as "C/M# 40655-201257," the attorney docket number for this application.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO.¹ Such *prima facie* showing established by a postcard receipt is, of course, rebuttable and findings of fact in each case must be based on a consideration of all of the evidence in the Office file for the application.

A review of the papers filed on March 16, 2001, which are present in the official file, shows that Applicant indeed filed 41 sheets of drawings as itemized and listed on the postcard receipt. On the other hand, the Office also notes that the allegedly omitted Figure 7A is not among these 41 sheets of drawings in the official file. Rather, the official file contains Figures 1-6 (6 sheets), Figures 7B-7C (2 sheets), Figures 8A-8M (13 sheets), Figure 9 (1 sheet), Figures 10A-10R (18 sheets), plus another sheet labeled as "Figure 8A" and apparently identical to the other sheet containing Figure 8A. Based on all of the evidence available in the file, it is concluded

¹ See MPEP 503 (Rev. 1, Feb. 2000).

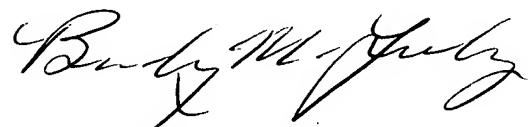
that Figure 7A was omitted from the application filed on March 16, 2001. It is apparent from the file that instead of supplying a drawing containing Figure 7A, Applicant filed a duplicate sheet containing Figure 8A.

Accordingly, the Notice mailed April 24, 2001 was correct and will not be withdrawn. The \$130 petition fee has been charged to Deposit Account No. 16-1435 as authorized.

In addition, the Office acknowledges receipt on June 25, 2001 of a signed declaration and power of attorney, and a statement claiming small entity status. The power of attorney has been entered and made of record. As also authorized, Deposit Account No. 16-1435 has been charged for the \$355 basic filing fee, the \$65 surcharge for late filing of the declaration, the \$63 for claims in excess of 20, and the \$240 for independent claims in excess of 3.

The application is being returned to OIPE for further processing with a filing date of March 16, 2001, using the drawings filed on that date.

Telephone inquiries concerning this matter may be directed to Petitions Attorney RC Tang at (703) 308-0763.



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